Supreme Court, U.S.
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No. 94-1903

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

IRVING HOCHBERG, MARTA KLAIMAN, SHELLEY SCHEFFLER, FIRST CHURCH OF CHANGO, INC., individually and on behalf of all members of the FIRST CHURCH OF CHANGO, INC.,

Petitioners,

v.

MAYNARD HOWLETT, EMANCIPATION, and CULT AWARENESS NETWORK, NY-NJ, C.F.F., INC.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF OF RESPONDENT, CULT AWARENESS NETWORK, NY-NJ, C.F.F., INC. IN OPPOSITION

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QUESTIONS PRESENTED

I. Was the decision of the Court of Appeals, in its affirmance of the granting by the District Court of summary judgment dismissing the complaint as to Respondent Cult Awareness Network, NY-NJ, C.F.F., Inc. in conflict with the decision in *Adikes v. S. H. Kress & Co.*, 398 U.S. 144 (1970)?

II. Was the decision of the Court of Appeals inconsistent with the standards to be applied to discovery proceedings, so as to call for an exercise of this Court's power of supervision?

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PERCEIVED MISTATEMENT OF FACTS

1. The Petition alleges (pp. 13 and 26), that Church members received anonymous packages containing CAN "*local affiliate*" brochures. However, the District Court found that the brochures "bore the imprint of CAN

NATIONAL only", and that they did not mention Respondent Cult Awareness Network, NY-NJ, C.F.F., Inc. (hereinafter "CAN NY-NJ") (A 28).

2. The Petition also alleges (pp. 13 and 27), that the Manual of Surveillance upon which Petitioners relied heavily in opposition to Respondent CAN NY-NJ's motion for summary judgment, was prepared "by a then member of Respondent CAN". The District Court determined, however, that Larry Zilliox, the co-author of the Manual, was a "former" member of said Respondent (A 27), a fact undisputed by Petitioners (A 34).

SUMMARY OF ARGUMENT

I.

THE COURT OF APPEALS DECISION AFFIRMING THE DISTRICT COURT GRANTING OF SUMMARY JUDGMENT, AND DISMISSAL OF THE COMPLAINT AS TO RESPONDENT CAN NY-NJ IS NOT IN CONFLICT WITH THE DECISION IN *ADIKES v. S. H. KRESS & CO.*, 298 U.S. 144 (1970).

Whereas, in *Adikes,* this Court held that summary judgment was improper because the "respondent failed to carry its burden of showing the absence of any genuine issue of fact" (398 U.S. 144, 153), the Court of Appeals in the case at bar held (A 5):

> "* * * As the district court noted, even if all inferences are drawn in favor of appellants, these allegations fail to establish a connection between CAN NY-NJ and the activities described in the complaint. * * *"

II.

THE DECISION OF THE COURT OF APPEALS IS NOT INCONSISTENT WITH THE STANDARDS TO BE APPLIED TO DISCOVERY PROCEEDINGS, SO AS TO CALL FOR AN EXERCISE OF THIS COURT'S POWER OF SUPERVISION.

Petitioners would argue (Pet. 22-27), that the denial by the District Court of their application for a continuance for the purpose of further discovery prior to granting of summary judgment, was a departure from the accepted and usual course of judicial proceedings, and that the Court of Appeals sanctioned such purported departure, requiring the exercise of this Court's power of supervision.

However, in addition to the District Court finding of an absence of any genuine issue of fact, as noted in Subdivision I above, the District Court, in its discretion, denied Petitioners' application for a continuance for their failure to submit an affidavit as mandated by F.R.C.P. Rule 56(f), setting forth "what facts are sought and how these facts are reasonably expected to create a genuine issue of material fact" (A 38). The Court of Appeals declined to interfere with this exercise of discretion.

There was thus no departure from the accepted and usual course of judicial proceedings by the District Court, nor any sanction of any such purported departure by the Court of Appeals. Nor is there any call for the exercise by this Court of its power of supervision.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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